



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	2/19/02	Bill No:	SB 1469
Tax:	Property	Author:	Johannessen
Board Position:	Support	Related Bills:	

BILL SUMMARY

This bill would specify that the rental of facilities to the public would not result in the loss of the veterans' organization exemption, as specified.

ANALYSIS

Current Law

Section 215.1 of the Revenue and Taxation Code provides a "veterans' organization exemption." This section purports to provide an exemption to:

"All buildings, and so much of the real property on which the buildings are situated as may be required for the convenient use and occupation of said buildings, used exclusively for charitable purposes, owned by a veterans' organization which has been chartered by the Congress of the United States, organized and operated for charitable purposes, when the same are used solely and exclusively for the purpose of such organization, if not conducted for profit and no part of the net earnings of which inures to the benefit of any private individual or member thereof, shall be exempt from taxation."

However, Section 215.1 also states that the exemption only applies to "the property of all organizations meeting the requirements of this section and subdivision (b) of Section 4 of Article XIII of the California Constitution and paragraphs (1) to (7), inclusive, of subdivision (a) of Section 214."

Pertinent to this bill, Section 214(a)(5) provides that an exemption is available if, among other requirements:

"The **property is not used** by the owner or members thereof **for fraternal or lodge purposes, or for social club purposes** except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose."

Extensive uncodified legislative findings were included with the enactment of Section 215.1 that will be addressed later in the analysis.

Proposed Law

This bill would amend Section 215.1 to provide that property owned by an organization that satisfies the requirements of Section 215 or Section 215.1 may not be denied the veterans' organization exemption because the property is occasionally made available for private rentals as a service to the community, provided that the amount of the rental

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fee charged is limited to that amount necessary to reimburse the veterans' organization for its costs in making the rental available, and any proceeds from the rentals are used exclusively for the charitable purposes of the organization.

In General

Welfare Exemption. Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemption*, was first adopted by voters as a constitutional amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes. The ballot language in favor of the amendment stated:

These nonprofit organizations assist the people by providing important health, citizenship and welfare services. They are financed in whole or in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

When the Legislature enacted Section 214 of the Revenue and Taxation Code to implement the Constitutional provision in 1945, a fourth purpose, *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether it operates for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending upon how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

The Constitution and statutes impose a number of requirements that must be met before property can become eligible for exemption. Nonprofit organizations claiming exemption for their properties must satisfy various organizational requirements and must meet additional requirements that govern the uses of their property. With respect to the use of the property:

- The property must be used exclusively for exempt purposes.
- The property must be used for the actual operation of an exempt activity.¹

¹ The exemption is limited to the amount of property reasonably necessary for the accomplishment of the exempt purpose. Portions of the property in excess of that reasonably necessary for the purposes of the organization do not meet the requirements for property tax exemption and are subject to taxation.

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- The property is not to be used for fraternal, lodge, or social club purposes except when the use is clearly incidental to the primary exempt purpose.

Background

Veterans' Organization Exemption. Section 215.1 was added by AB 184 (Powers, Ch. 151, Stats. 1972.) Apparently, this bill would have essentially restored language previously included in Section 215 that also purported to provide an exemption for real property owned by veterans' organizations. This provision was deleted from Section 215 in 1970 because its provisions had been held invalid by the Attorney General in 1946 (8 Ops.Cal.Atty.Gen. 72) and was therefore considered "deadwood."

When AB 184 was enacted, an extensive uncodified statement of legislative finding was included, that appears to address the prior findings of the Attorney General. It read:

It has been stated that former Section 1c of Article XIII of the Constitution is not broad enough to serve to exempt buildings used for meetings and social gatherings of veterans' organizations. However, the Legislature finds that some of these organizations, such as the American Legion, are incorporated for purposes such as the following:

"...To uphold and defend the Constitution of the United States of America; to promote peace and good will among the peoples of the United States and all the nations of the earth; to preserve the memories and incidents of the two world wars and the other great hostilities fought to uphold democracy; to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country."

It is established that "charity," as used in Section 1c of Article XIII is not limited to the giving of alms to the poor. It has been defined in a number of cases as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.

Moreover, it is recognized that a charitable exemption may be granted to property of organizations providing such diverse services as civic theater performances and recreational opportunities for members of a boys' club for 10 weeks each year.

In acting under Section 1c of Article XIII, the Legislature must necessarily construe the terms of the provision in order to determine the extent of its authority to act thereunder, and the Legislature finds it reasonable to exempt the property of organizations devoted to spreading patriotism and unity and to promoting respect for those who serve their country in the armed services in times of peril, and which bring the hearts of the youth of this state under the influence of education through their various programs (such as Boys State, Boy Scout sponsorship and oratorical contests dealing with the Constitution of the United States), and which lessen the burdens of government through their additional programs (such as veterans employment, Veterans Administration volunteer services in hospitals, and junior baseball). The members of such an organization must necessarily

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have some accommodations in which to meet and correlate their activities, and the Legislature finds that such activities are incidental to, and reasonably necessary for, the accomplishment of the exempt activities of such organizations.

The Board of Equalization had opposed AB 184 and in correspondence to then Governor Ronald Reagan, dated June 9, 1972, the Board recommended that the bill not be approved. That letter stated, in part:

While AB 184 implies that the activities of veterans' organizations are charitable, it does not directly so state. * * * This curious construction invites litigation. If a tax benefit is to be granted, it should be clear as to what that benefit is.

From an overall view, AB 184 is susceptible of three interpretations. First, it may be viewed as the creation of a new exemption which would be invalid without the support of a constitutional amendment. Second, it may be viewed as merely permitting veterans' organizations to receive the welfare exemption if they meet the traditional concepts of charity and otherwise satisfy other welfare exemption requirements. Under this view, AB 184 is an exercise in futility since it is highly doubtful that any organization could qualify and those organizations which do qualify are entitled to the existing welfare exemption. Third, the bill may be viewed as a vague attempt to expand the concept of charity so as to permit veterans' organizations to receive the benefit of the welfare exemption. Such a broadening is of doubtful constitutional validity and, as noted earlier, an initiation to further erosion of the tax base through the extension of the exemption to many other equally worthy organizations.

The Governor did sign AB 184 and it was enacted into law. Thereafter, in 1972-73 many veterans' organizations applied for the new exemption under new Section 215.1 believing that the newly enacted law would exempt their property from property tax. However, the claims for exemptions on the properties appeared to have been all denied by the Board of Equalization, presumably for one of the three rationales described above.

Given the situation, the author of AB 184, Assemblyman Powers, requested an attorney's general opinion on the constitutionality of Section 215.1. On June 12, 1973, the Attorney General opined (56 Ops. Atty Gen 255) that Section 215.1 was constitutional because to qualify the property for exemption one must also meet all the provisions of 214(a)(1) - (7). Of particular interest is Section 214(a)(5) which provides that to qualify for the welfare exemption, the property can not be used by the owner or members thereof for fraternal or lodge purposes except where the use is clearly incidental to a primary religious, hospital, or charitable purposes. While the creation of the exemption was deemed technically "constitutional," in practice, most veterans' organizations would be ineligible for exemption (at least on the majority of the property) under Section 215.1 because many of the properties are used for fraternal, lodge or social purposes, thereby disqualifying the properties under Section 214(a)(5). The opinion states, in part

It should be clearly understood, however, that in reaching this conclusion we are not saying that each and every application for exemption must be granted. Every applicant will have to meet the requirement that it be organized for charitable purposes * * * and comply with the applicable legislative enactments.

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The forgoing serves to indicate some of the problems that veterans' organizations will meet, notwithstanding a legislative finding such as Section 9 of Statutes of 1972, chapter 151. Rather than our deciding whether such finding is supported by objective factors, we believe it is more appropriate to withhold judgment until specific cases arise.

Veterans' organizations representatives subsequently protested the exemption denials before the Board on January 4, 1974. Ultimately, the new Section 215.1 exemption was extended to a limited portion of the entire veterans' organization property, such as the counseling rooms used for readjustment services, post-traumatic stress disorders, and alcohol or drug assistance programs.

COMMENTS:

1. **Sponsor and Purpose.** This bill is sponsored by the author to ensure that veterans' organizations receive a property tax exemption on their posts.
2. **The current language in this bill would not ensure any additional exemptions of veterans' organizations property; consequently further amendments will be forthcoming.** While the language accurately reflects the reason given to a particular veterans' organization as to the inapplicability of the exemption on their post, further inquiry has shown that the Section 214(a)(5) requirement of the statute is the reason for the denial of the exemption. The language only addresses the incidental use of these properties. These properties are generally subject to taxation when the primary use of the properties are for social and fraternal uses. Thus, this bill will not result in the exemption of any, or any portion of any, additional veterans' organization properties. Staff has been working with the author's office to develop alternatives that would meet the author's intent.
3. **Section 215.1 and the uncodified statement of legislative intent accompanying its enactment purports to extend an exemption to the real property of veterans' organizations.** However, historically the "veterans' organization exemption" appears not to have much practical effect. Relatively few veterans' organization properties currently receive the exemption and those that do are only receiving a partial exemption on a small part of their property. Last year, 62 veterans' organization properties applied for the veterans' exemption and a number of these are currently receiving a partial exemption, generally on the office or room(s) used for counseling. Consequently, the dollar amount being granted is typically very small.
4. **The reason for not granting the veterans' organization exemption on the majority portion of the property is that the activities taking place at the property, i.e., the use to which the property is put, is not considered "charitable."** Main portions of the veterans' organization properties like the club room, auditorium, restaurant, and bar have not been granted the veterans' organization exemption as they were deemed to be used by the members for

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fraternal, lodge or social club purposes at a level of use that was found to be more than “incidental.” The extent of a partial exemption to any particular property would be made on a case-by-case basis according to the facts in the situation. Posts may vary as to the extent of the charitable activities performed on the property.

5. **The property of other lodges and clubs owned by other types of nonprofit organizations are similarly not property tax exempt.** For example, lodges and clubs owned by the Elks, Moose, Oddfellows, and Rotary, etc. are not exempt from taxation. Consequently, if legislation is ultimately successful in exempting property used for fraternal, lodge or social purposes, then similarly situated nonprofit organizations will likely seek similar tax treatment.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Existing law provides for the exemption of property used for charitable purposes that is owned by veterans' organizations. Statewide, only a handful of veterans' organization exemptions are granted and only for a small portion of the property, usually an office or room used for counseling. The dollar amount of the exemption is typically very small. The main portion of the veterans' organization property, such as the club room, auditorium, restaurant, or bar, have not been given the exemption because it is not being used for charitable purposes.

Revenue Summary

Since this bill only addresses the incidental use of the properties owned by these organizations and will not result in any additional properties qualifying for exemption, this proposal has no revenue effect in its current form. Corrective amendments will result in a revision of this revenue estimate.

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